

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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CARLOS ABREU,

Plaintiff,

DECISION AND ORDER

07-CV-6491L

v.

CORRECTION OFFICER MERSON,  
et al.,

Defendants.

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Plaintiff, Carlos Abreu, an inmate in the custody of the New York State Department of Correctional Services (“DOCS”), commenced this *pro se* action under 42 U.S.C. § 1983. On December 13, 2007, the Court issued a Decision and Order that, *inter alia*, directed the Clerk of the Court “to file plaintiff’s papers, and to cause the United States Marshal to serve copies of the Summons [and] Complaint (without Exhibits) ... upon the named defendants without plaintiff’s payment therefor ... .” Dkt. #5 at 5.

As noted in the Court’s December 13 Decision and Order, “[t]he Complaint in the present case numbers 1136 paragraphs,” and is roughly one and a half inches thick. Apparently through a clerical oversight, however, only the first twenty pages of the complaint (well under half of the document) were electronically filed. It also appears that only the electronically-filed portion of the complaint was served on defendants.

Defendants have now moved to dismiss the complaint, based on part of the failure to effect proper service. Defendants also contend that the fragment of the complaint that was served on them fails to state a claim upon which relief can be granted.

Since it appears that, through no fault of plaintiff, the entire complaint has never been served on defendants as directed in the Court's prior order, I conclude that the best course of action is to deny defendants' motion without prejudice, and to direct that the entire complaint be served on defendants, as set forth in the Conclusion of this Decision and Order.

### **CONCLUSION**

The Clerk of the Court is hereby directed to re-file the complaint, in its entirety, and to cause the United States Marshal to serve a copy of the entire complaint upon defendants' attorney. The exhibits to the complaint, which have already been manually filed, need not be electronically filed or physically served on defense counsel, but shall remain available at the Clerk's Office for inspection and review by defendants' attorney.

Defendants' motion to dismiss the complaint (Dkt. #18) is denied without prejudice.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
January 9, 2009.